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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. [redacted] 212

DAVID EARL TRAMMELL,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. .....

DAVID EARL TRAMMELL,
Petitioner,

vs.

STATE OF ALABAMA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

To the Honorables the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a Writ of Certiorari issue to review the judgment and opinion of the Court of Appeals of Alabama affirming petitioner's conviction in the Circuit Court of the Tenth Judicial Circuit of Alabama.

OPINIONS BELOW

The judgment and opinion of the Court of Appeals of Alabama, ... Alabama ....., ... So. 2d ....., Appendix A.

JURISDICTION

On October 22, 1968, the Court of Appeals of Alabama entered a judgment and opinion affirming petitioner's conviction in the Circuit Court of the Tenth Judicial Circuit of Alabama, Appendix A. The Court of Appeals of Alabama denied petitioner's application for rehearing without opinion on November 12, 1968. Thereafter on March 13, 1969, the Supreme Court of Alabama denied without opinion petitioner's writ of certiorari to review the opinion of the Court of Appeals.

The jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1257(3).

QUESTIONS PRESENTED

Circumstances of the Case

Petitioner was tried and convicted of grand larceny on his plea of guilty to grand larceny (R. 7) as charged in an indictment (R. 2) which contained three counts in code form as follows: Count One—grand larceny (Title 15, Section 259, Form 66, Code of Alabama); Count Two—bringing stolen goods into the state (Title 15, Section 259, Form 25, Code of Alabama); Count Three—buying, receiving or concealing stolen goods (Title 15, Section 259, Form 91, Code of Alabama). Upon said plea the trial court entered a judgment of "* * * guilty to grand larceny as charged in the indictment * * *." (R 7). Petitioner gave notice of appeal to the Court of Appeals of Alabama (R. 8). On appeal petitioner questioned the jurisdiction of the courts of Alabama of the offense for which he had been convicted when it was apparent from the face of the in-

dictment (R. 2) that the grand larceny had occurred in the State of Tennessee. On October 22, 1968, the Court of Appeals of Alabama entered a judgment and opinion (R. 13-14, Appendix A) affirming petitioner's conviction. Rehearing in that Court and review by certiorari in the Supreme Court of Alabama were thereafter denied.

THE QUESTIONS

1. Can petitioner be convicted and punished in the Courts of Alabama for a crime committed in the State of Tennessee?

CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE IV, SECTION 2:

"A person charged in any State with Treason, Felony or other Crime, who shall flee from Justice, and be found in another State shall, on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

FIFTH AMENDMENT:

"* * * nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; * * * nor be deprived of life, liberty or property without due process of law * * *."

SIXTH AMENDMENT:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, * * * to have compulsory process for obtaining witnesses in his favor * * *."

FOURTEENTH AMENDMENT:

"* * * No State * * * shall * * * deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

Code of Alabama 1940 (Recomp. 1958)

"Title 14, Section 331. GRAND LARCENY.—Any person * * * who steals any personal property * * * of the value of twenty-five dollars or more, * * * with intent to convert the same to his own use * * * shall be guilty of grand larceny * * *."

STATEMENT OF THE CASE

Petitioner was charged upon an indictment (R. 2) found by the grand jury of Jefferson County, Alabama, January term, 1967, which said indictment contained three counts in Code form as follows:

"INDICTMENT #14052

THE STATE OF ALABAMA) CIRCUIT COURT OF
JEFFERSON COUNTY) TENTH JUDICIAL CIRCUIT

January Session 1967

The grand jury of said county charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL, feloniously took and carried away One two-door Ford Mustang automobile of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks.

2nd: The Grand Jury of said county further charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL,

feloniously took and carried away in the State of Tennessee, One two-door Ford Mustang of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks, and brought said motor vehicle into the County of Jefferson in this State.

3rd: The Grand Jury of said county further charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL did buy, receive, conceal or aid in concealing One two-door Ford Mustang Automobile of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks, knowing that it was stolen and not having the intent to restore it to the owner, against the peace and dignity of the State of Alabama.

Earl C. Morgan
District Attorney, Tenth Judicial Circuit of Alabama."

On October 9, 1967, petitioner entered a plea of "* * * guilty to grand larceny as charged in the indictment * * *." (R. 7). The trial court entered a judgment finding petitioner "* * * guilty of grand larceny as charged in the indictment * * *," (R. 7) and sentencing petitioner to imprisonment for a term of four years. Petitioner then made application for probation, which application was passed until October 27, 1967, for a hearing (R. 7).

On October 27, 1967, the trial court denied petitioner's application for probation and petitioner gave notice of appeal to the Court of Appeals of Alabama (R. 8). On October 22, 1968, the Court of Appeals of Alabama entered a judgment and opinion which held in substance that petitioner's plea of guilty in open court to "grand larceny" rendered immaterial all issues raised on appeal and that the decision of the United States Court of Appeals for the Fifth Circuit in *Busby* v. *Holman*, 356 F. 2d 75, required that petitioner's conviction be affirmed (R. 13-14). There-

after, and within the time required by law, petitioner made an application for rehearing in the Court of Appeals on the grounds, inter alia, that the Court had misconstrued the decision of the Fifth Circuit in *Busby* v. *Holman,* supra, and that the errors complained of and issues raised on appeal were jurisdictional and, therefore, not waived or rendered immaterial by petitioner's plea of guilty.

On November 12, 1968, petitioner's application for rehearing was overruled without opinion (R. 14).

On March 13, 1969, the Supreme Court of Alabama denied petitioner's application for a writ of certiorari to the Court of Appeals without an opinion. (The proceedings in the Supreme Court are enclosed in the record in the Court of Appeals without pagination.)

Petitioner first raised the lack of jurisdiction of the trial court to convict and impose punishment for an offense committed in the State of Tennessee on appeal to the Court of Appeals. Petitioner then pointed out on rehearing that reliance upon the holding of the United States Court of Appeals for the Fifth Circuit in *Busby* v. *Holman,* supra, was misplaced, in that the issue raised by petitioner was jurisdictional. This issue was also raised on petition for writ of certiorari in the Supreme Court of Alabama.

REASONS FOR GRANTING THE WRIT

Crimes Are Cognizable and Punishable Only in the State Wherein Committed and the Courts of Alabama Have No Jurisdiction to Punish for an Offense Committed in the State of Tennessee.

I

On October 22, 1968, the Court of Appeals of Alabama entered a judgment and opinion affirming petitioner's conviction in the Circuit Court of Jefferson County, Alabama.

In its opinion the Court held that petitioner's plea of guilty to "grand larceny", Count One of the indictment charging said offense in the form prescribed by Title 15, Section 259, Form 66, Code of Alabama 1940 (Recomp. 1958), rendered immaterial the issues raised and the questions presented on appeal. The Court relied upon the decision of the United States Court of Appeals for the Fifth Circuit in *Busby* v. *Holman,* 356 F. 2d 75, and construed said decision as requiring that petitioner's conviction be affirmed.

Petitioner contends that the Court of Appeals erred in its construction and application of the above cited federal case. The pertinent language in the decision referred to is as follows:

> "* * * the plea, if voluntarily and understandingly made, is conclusive as to the defendant's guilt, admitting all the facts charged and waiving all non-jurisdictional defects in the prior proceedings against him (Citations omitted)."
>
> *Busby* v. *Holman,* supra, at page 77.

The issues raised in the Court of Appeals of Alabama by petitioner concerned the jurisdiction of an Alabama circuit court to entertain and proceed to judgment on an indictment charging grand larceny when the larceny complained of occurred without the territorial limits of the State of Alabama, said fact being readily apparent on the face of the indictment. These issues raised serious questions concerning the jurisdiction of the sentencing court to entertain the proceedings therein; thus rendering *Busby* v. *Holman,* supra, inapplicable as authority in the instant proceedings in that said case merely held that a plea of guilty waived all non-jurisdictional defects, which petitioner readily admits.

Petitioner insists that the Court of Appeals erred in its construction of the case relied on and further insists

that it is well settled and fundamental that a plea of guilty does not waive a lack of jurisdiction in the sentencing court as is hereinafter shown, and that, therefore, the conviction was coram non judice and void.

II

Article IV, Section 2 of the Constitution of the United States clearly indicates that only the state wherein an offense is committed has jurisdiction to punish for that offense. The Fifth Amendment to the Constitution of the United States guarantees to an accused the right that he shall not be placed twice in jeopardy and that he shall not be punished for a crime without due process of law.

The Sixth Amendment to the Constitution of the United States guarantees to an accused the right to be tried by an impartial jury of the state and district wherein the crime shall have been committed and the right to compel the attendance of witnesses in his favor.

The due process clause of the Fourteenth Amendment to the Constitution of the United States makes the above constitutional guarantees and prohibitions binding upon the states so that it is constitutionally impermissible for any state to impose punishment for a crime committed outside of its territorial boundaries.

The proposition that courts of a particular sovereignty have no extra territorial jurisdiction of offenses committed outside of their territorial boundaries has been recognized and approved by this Court. *Dennick* v. *Central Railroad Co.*, 103 U.S. 11, 26 L. Ed. 439; *Wisconsin* v. *Pelican Insurance Co.*, 127 U.S. 265, 32 L. Ed. 239; *Huntington* v. *Attrill*, 146 U.S. 657, 36 L. Ed. 1123, 13 S. Ct. 224. See also *Ex parte McNeely*, 36 W. Va. 84, 14 S.E. 436; *People* v. *Devine*, 185 Mich. 50, 151 N.W. 646; *Stewart* v. *Jessup*, 51 Ind. 413; *State* v. *Seay*. 3 Stew. (Ala.) 123.

It is petitioner's contention that the Constitution of the United States as interpreted in the above referenced cases precludes the punishment in Alabama of an offense committed in another state. To hold otherwise would be to allow an accused to be twice placed in jeopardy for the same offense, for a conviction here would surely be no bar to a trial and conviction for the same offense in the state wherein the offense was committed. Such a conclusion would also deprive to an accused his right to be tried for an offense in the state wherein the offense was committed, and would further deprive him of his right to compel the attendance of witnesses in his behalf, thereby depriving the defendant of his liberty without due process of law.

In *Dennick* v. *Central Railroad Co.*, supra, the Supreme Court of the United States held that criminal laws can only be enforced by the courts of the state where the offense was committed. In *Wisconsin* v. *Pelican Insurance Co.*, supra, the Court held that the proper place for punishment is where the crime is committed and that no court concerns itself with punishment for any act committed without its territorial boundaries. Both of the above cited cases were recognized as authority in *Huntington* v. *Attrill*, supra, wherein it was held:

> "Crimes and offenses against the laws of any State can only be defined, prosecuted and pardoned by the sovereign authority of that State; and the authorities, legislative, executive or judicial, of other States take no action with regard to them, except by way of extradition to surrender offenders to the State whose laws they have violated, and whose peace they have broken."
>
> "Penal laws have no extraterritorial effect."
>
> "Crimes are cognizable and punishable only in the State wherein committed."

III

The petitioner on October 9, 1967, entered a plea of "* * * guilty to grand larceny, as charged in the indictment * * *." (R. 7). The Court, upon petitioner's plea of guilty, entered a judgment of "* * * guilty of grand larceny, as charged in the indictment * * *." (R. 7). The indictment (R. 2) contained three counts. Count One charged grand larceny in the form prescribed by Title 15, Section 259, Form 66, Code of Alabama 1940 (Recomp. 1958). Counts Two and Three charged, respectively, the offenses of bringing stolen goods into this State and buying, receiving and concealing stolen goods in the appropriate forms as prescribed by statute. Count Two of the indictment (R. 2) charged that the petitioner "* * * feloniously took and carried away in the State of Tennessee * * *," an automobile and brought same into this State. Thus it is apparent upon the face of the indictment that the larceny complained of, and the offense to which petitioner entered his plea of guilty, and upon which he was convicted, occurred in the State of Tennessee and without the territorial boundaries of the State of Alabama. The conviction thus entered cannot be sustained as the court was without jurisdiction of the offense charged in the count of the indictment upon which the judgment of conviction was entered.

This lack of jurisdiction in an Alabama court to impose punishment for an offense committed in Tennessee is most certainly not a non-jurisdictional defect and, therefore, the Court of Appeals erred in applying the decision of the United States Court of Appeals in *Busby* v. *Holman*, supra, in its opinion affirming petitioner's conviction. Petitioner is not precluded from raising such lack of jurisdiction on appeal by reason of his having entered a plea of guilty in the Circuit Court.

Petitioner contends that the Court erred in its application of the above cited federal case and points out that the Court of Appeals therein held that a plea of guilty waived all non-jurisdictional defects in the prior proceedings in that case. The defect complained of on appeal in the instant case was jurisdictional in that it questioned the jurisdiction of an Albama court to entertain a prosecution on a charge of grand larceny when it was readily apparent on the face of the indictment that the offense was committed without the territorial boundaries of the State of Alabama. Such fact goes to the very heart and essence of the jurisdiction of the sentencing court; thus rendering the above cited federal case inapplicable as authority.

CONCLUSION

Petitioner respectfully submits the Court of Appeals of Alabama has ignored the applicable decisions of this Court in affirming petitioner's conviction and denied him a right guaranteed by the Constitution of the United States. The denial of this very right was specifically mentioned by the founders of this nation in the Declaration of Independence.

Wherefore petitioner prays that a writ be granted to review the decision of the Court of Appeals of Alabama as such decision is not in accord with the applicable decisions of this Court and tacitly approves a denial of petitioner's fundamental rights.

Respectfully submitted,

WILLIAM B. MCCOLLOUGH, JR.

APPENDIX A

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE ALABAMA COURT OF APPEALS

OCTOBER TERM, 1968-69

6 Div. 363

David Earl Trammell, alias

v.

State

Appeal from Jefferson Circuit Court

JOHNSON, JUDGE

Appellant pled guilty in open court to "grand larceny". Count One of the indictment follows Form 66, Sec. 259, Tit. 15, Code of Ala., 1940.

Hence, all questions as to the remaining counts in the indictment are immaterial. The plea of guilty under *Busby* v. *Holman*, 356 F. 2d 75 (5th Cir., 1966), requires that the judgment below be

AFFIRMED.

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In The

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NO. 212

DAVID EARL TRAMMELL,

PETITIONER

versus

STATE OF ALABAMA,

RESPONDENT

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF ALABAMA

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DAVID W. CLARK
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COUNSEL FOR RESPONDENT

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In The

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NO._____

DAVID EARL TRAMMELL,

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STATE OF ALABAMA,

RESPONDENT

BRIEF AND ARGUMENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

BRIEF AND ARGUMENT FOR RESPONDENT

I

OPINIONS OF THE COURT BELOW

The Opinion of the Court of Appeals of Alabama is reported as follows:

David Earl Trammell v. State of Alabama, 220 So. 2d 258. The Supreme Court of Alabama denied Certiorari 220 So. 2d 258.

II

JURISDICTION

The petitioner has applied for a writ of certiorari from the Supreme Court of the United States to review the judgment of the Court of Appeals of Alabama rendered on October 22, 1968. Application for rehearing was denied November 12, 1968. A petition to the Supreme Court of Alabama for writ of certiorari was denied on March 13, 1969.

Petitioner applies under the provisions of Title 28, Section 1257(3), United States Code.

III

QUESTION PRESENTED

The petition in this case raises the following issue:

Can the plea of guilty to Count One of an indictment reading in Code form be construed to be of a crime committed in another state?

IV

CONSTITUTIONAL PROVISIONS INVOLVED

Article 4, Section 2, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

V

STATEMENT OF THE CASE

Petitioner was charged upon an indictment (R. p. 2) found by the Grand Jury of Jefferson County, Alabama,

January Term 1967, which said indictment contained three counts in Code form as follows:

"INDICTMENT #14052

"THE STATE OF ALABAMA) CIRCUIT COURT
JEFFERSON COUNTY) OF TENTH
JUDICIAL
CIRCUIT

January Session 1967

"The grand jury of said county charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL, feloniously took and carried away One two-door Ford Mustang automobile of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks.

"2nd: The Grand Jury of said county further charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL, feloniously took and carried away in the State of Tennessee, One two-door Ford Mustang of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks, and brought said motor vehicle into the County of Jefferson in this State.

"3rd: The Grand Jury of said county further charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL did buy, receive, conceal or aid in concealing One two-door Ford Mustang Automobile of the value of Eighteen Hundred

Ninety-Five Dollars, the personal property of Laura Hendricks, knowing that it was stolen and not having the intent to restore it to the owner, against the peace and dignity of the State of Alabama.

"Earl C. Morgan
District Attorney, Tenth Judicial
Circuit of Alabama."

On October 9, 1967, petitioner entered a plea of " . . . guilty to grand larceny as charged in the indictment . . . " (R. p. 7) The trial court entered a judgment finding petitioner " . . . guilty of grand larceny as charged in the indictment . . .," (R. p. 7) and sentencing petitioner to imprisonment for a term of four years. Petitioner then made application for probation, which application was passed until October 27, 1967, for a hearing (R. p. 7).

On October 27, 1967, the trial court denied petitioner's application for probation and petitioner gave notice of appeal to the Court of Appeals of Alabama (R. p. 8).

On October 22, 1968, the Court of Appeals of Alabama affirmed the lower court's decision holding:

"Appellant pled guilty in open court to 'grand larceny.' Count One of the indictment follows Form 66, Sec. 259, Tit. 15, Code of Alabama 1940.'

"Hence, all questions as to the remaining counts in the indictment are immaterial. The plea of guilty under Busby v. Holman, 356 F. 2d 75 (5th Cir. 1966) requires that the judgment below be affirmed."

VI

SUMMARY OF ARGUMENT

Where petitioner has voluntarily entered a plea of guilty to grand larceny in Count One of an indictment in Code Form, no constitutional right is violated and no federal question presented.

VII

ARGUMENT

Petitioner argues that the State of Alabama lacked jurisdiction to try him. He cites applicable law to the effect that a particular sovereignty has no extra territorial jurisdiction of offenses committed outside their territorial boundaries.

The indictment returned against petitioner contained three counts: No. 1 grand larceny, No. 2 bringing stolen property into the State, and No. 3 buying, selling, receiving, concealing or aiding in concealing stolen property.

He voluntarily entered a plea of guilty to grand larceny, which was Count One of the indictment.

Title 14, Section 331, Code of Alabama 1940, defines grand larceny.

Count One followed the Code Form No. 66 of Title 15, Section 259, Code of Alabama 1940.

Count No. 2 of the indictment charged the offense of bringing stolen property into the State. Count No. 2 follows

the wording of the indictment in *Breedlove v. State*, 204 So. 2d 835.

Title 15, Section 97, Code of Alabama 1940, provides:

"§ 97. Bringing stolen property into this state.—When property is stolen elsewhere and brought into this state, the jurisdiction is in any county into which the property is brought."

The above section establishes the jurisdiction in such cases.

For the section dealing with such offense, attention is directed to Title 14, Section 337, Code of Alabama 1940, which provides:

"§ 337. Bringing stolen property into this state.—Any person who fraudulently brings into this state any personal property which he knew was stolen elsewhere, shall, on conviction, be punished as if had stolen it in this state."

Appellant in open court and represented by attorney, withdrew his prior plea of not guilty and entered a plea of guilty of grand larceny. This charge is set out in Count No. 1 of the indictment in Code Form.

Petitioner does not discuss Count No. 3 which is buying, receiving, concealing, etc., stolen property as set out in Title 15, Section 338, Code of Alabama 1940.

Thus, it is seen that the indictment returned against petitioner contained three counts: (1) grand larceny, (2) bringing stolen property into the state, and (3) buying, receiving, concealing, etc., stolen property.

Petitioner, represented by counsel, withdrew his plea of not guilty and entered a plea of guilty of grand larceny.

There is nothing that infers that the property was stolen in Tennessee. Out of an abundance of caution, the three counts were put in the indictment and only Count One is applicable. It alleges the commission of grand larceny "against the peace and dignity of the State of Alabama."

VIII

CONCLUSION

For the foregoing reasons, respondent submits that the petitioner was properly convicted by a Court having jurisdiction both of the person and of the offense and, therefore, no constitutional rights of accused were violated. No Federal question is presented to this Court. Therefore, the writ of certiorari in this case should be denied.

Respectfully submitted,

MacDonald Gallion

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COUNSEL FOR RESPONDENT

IX

CERTIFICATE

I, David W. Clark, one of the attorneys for respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 26TH day of June, 1969, I served a copy of the foregoing brief and argument upon one of the attorneys for petitioner, by mailing a copy in a duly addressed envelop to said attorney of record, as follows:

To: Honorable William B. McCollough, Jr.
Attorney at Law
908 Frank Nelson Building
Birmingham, Alabama 35203

David W. Clark

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Assistant Attorney General
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